



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

MAR 29 2004

OFFICE OF PETITIONS

Group No.: 3743

Examiner: C. Atkinson

Applicants: Robert James GERNDT
John Joseph SAYOVITZ

Serial No.: 09/240,524

Filing Date: 29 January 1999

Title: FLUID DISTRIBUTION SYSTEM FOR
THERMAL TRANSFER ROLLERS

REQUEST TO THE EXAMINER TO RESUBMIT APPLICATION TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES
FOR DECISION ON APPEAL

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In view of the Opinion of the Board of Patent Appeals and Interferences
mailed on 11 March 2004, Applicants respectfully request the Examiner to resubmit
the subject U.S. Patent Application to the Board of Patent Appeals and Interferences

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being
deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for
Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

22 March 2004

22 March 04
Date

Eric Kruschke
Signature

for decision on appeal. The Board remanded the subject U.S. Patent Application to the Examiner to determine whether the appeal should be dismissed for failure to timely pay the appeal brief fee, and if so, to determine if this application is abandoned. Applicants respectfully request the Examiner to resubmit Applicants' Appeal to the Board of Patent Appeals and Interferences with a determination that the appeal brief fee was timely paid, and thus, the application is not abandoned.

On 24 June 2002, Applicants filed a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences, wherein the Commissioner was authorized to charge *any deficiencies in fees* which may be required, or credit any overpayment to Deposit Account No. 19-3550. (Paper No. 30)

On 16 August 2002, Applicants filed with the U.S. Patent and Trademark Office one copy of an Appeal Brief under 37 C.F.R. § 1.192, without a check for the appeal brief fee. (Paper No. 31)

On 11 March 2003, the Board of Patent Appeals and Interferences mailed an Order Returning Undocketed Appeal To Examiner, stating that there is no indication that the appeal brief fee had been received and/or applied and that the Board was able to locate only one copy of the Appeal Brief instead of the required three copies pursuant under 37 C.F.R. § 1.192. (Paper No. 35)

On 31 March 2003, Examiner Atkinson mailed an Office Communication entitled "Response to Non-Responsive Brief" alleging that the

Serial No.: 09/240,524

Appeal Brief and Notice of Appeal are non-responsive to the prior Office Action because no appeal brief fee has been paid and there is only one copy of the Appeal Brief. Examiner Atkinson indicated that “Since the response appears to be *bona fide*, but through an apparent oversight or inadvertence failed to provide a complete response, applicant is required to complete the response within a time limit of one month from the date of this letter or within the time remaining in the response period of the last Office action, whichever is longer.” (Paper No. 36)

On 22 April 2003, Applicants filed with the U.S. Patent and Trademark Office a Response To The Response To Non-Responsive Brief, including three true copies of the Appeal Brief Under 37 C.F.R. 1.192, as originally filed on 16 August 2002, and a check in the amount of \$320.00 to cover the appeal brief fee, again authorizing the Commissioner to charge any deficiency or to credit any overpayment to Deposit Account No. 19-3550. (Paper No. 37)

On 09 July 2003, Examiner Atkinson mailed an Office Communication indicating that “The reply brief filed 5/1/2003 has corrected the non-responsiveness and has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.” (Paper No. 38)

Applicants respectfully submit that the appeal brief fee was timely paid for at least the following reasons: (a) the Notice of Appeal filed on 24 June 2002

Serial No.: 09/240,524

authorized the Commissioner to charge *any deficiencies in fees* which may be required, or credit any overpayment to Deposit Account No. 19-3550; and (b) Applicants timely filed with the U.S. Patent and Trademark Office a Response To The Response To Non-Responsive Brief, including three true copies of the Appeal Brief Under 37 C.F.R. 1.192, as originally filed on 16 August 2002, and a check in the amount of \$320.00 to cover the appeal brief fee, authorizing the Commissioner to charge any deficiency or to credit any overpayment to Deposit Account No. 19-3550.

In view of the above remarks, Applicants respectfully request the Examiner to resubmit the subject U.S. Patent Application to the Board of Patent Appeals and Interferences with a determination that the appeal brief fee was timely paid, and thus, the application is not abandoned.

On remand, if the Examiner determines that the subject U.S. Patent Application is abandoned for failure to timely pay the appeal brief fee, Applicants petition the Commissioner to revive the subject U.S. Patent Application, as set forth in the Provisional Petition To Revive Unintentionally Abandoned Application Under 37 C.F. R § 1.137(b), enclosed herewith. The Commissioner is authorized to charge the Petition Fee of \$1,330.00 under 37 C.F.R. 1.17(m) to Deposit Account 19-3550 and Applicants respectfully request that the petition be granted. Further, if it is determined that an additional appeal brief fee is required, the Commissioner is authorized to charge any deficiency for the appeal brief fee of \$320.00 to Deposit

Serial No.: 09/240,524

Account No. 19-3550.

Respectfully submitted,



Eric T. Krischke
Reg. No. 42,769

Pauley Petersen & Erickson
2800 W. Higgins Road
Suite 365
Hoffman Estates, Illinois 60195
847.490.1400
fax: 847.490.1403